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# HOUSE BILL No. 1373

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-42-1-4; IC 35-50-2-2.

**Synopsis:** Involuntary manslaughter. Increases the penalty for a child care provider who commits involuntary manslaughter from a Class D felony to a Class C felony. Makes the offense a nonsuspendible offense.

**Effective:** July 1, 2005.

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### Tincher, Kersey

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January 13, 2005, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1373

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 35-42-1-4 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) As used in this  
3 section, "child care provider" means a person who provides child care  
4 in or on behalf of:  
5 (1) a child care center (as defined in IC 12-7-2-28.4); or  
6 (2) a child care home (as defined in IC 12-7-2-28.6);  
7 regardless of whether the child care center or child care home is  
8 licensed.  
9 (b) As used in this section, "fetus" means a fetus that has attained  
10 viability (as defined in IC 16-18-2-365).  
11 (c) A person who kills another human being while committing or  
12 attempting to commit:  
13 (1) a Class C or Class D felony that inherently poses a risk of  
14 serious bodily injury;  
15 (2) a Class A misdemeanor that inherently poses a risk of serious  
16 bodily injury; or  
17 (3) battery;



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commits involuntary manslaughter, a Class C felony. However, if the killing results from the operation of a vehicle, the offense is a Class D felony.

(d) A person who kills a fetus while committing or attempting to commit:

(1) a Class C or Class D felony that inherently poses a risk of serious bodily injury;

(2) a Class A misdemeanor that inherently poses a risk of serious bodily injury; or

(3) battery;

commits involuntary manslaughter, a Class C felony. However, if the killing results from the operation of a vehicle, the offense is a Class D felony.

(e) If:

(1) a child care provider recklessly supervises a child; and

(2) the child dies as a result of the child care provider's reckless supervision;

the child care provider commits involuntary manslaughter, a ~~Class D~~ **Class C** felony.

SECTION 2. IC 35-50-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.7:

(1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention

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under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

- (A) murder (IC 35-42-1-1);
- (B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;
- (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- (D) kidnapping (IC 35-42-3-2);
- (E) confinement (IC 35-42-3-3) with a deadly weapon;
- (F) rape (IC 35-42-4-1) as a Class A felony;
- (G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;
- (H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;
- (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;
- (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;
- (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;
- (L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;
- (M) escape (IC 35-44-3-5) with a deadly weapon;
- (N) rioting (IC 35-45-1-2) with a deadly weapon;
- (O) dealing in cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:
  - (i) school property;
  - (ii) a public park;
  - (iii) a family housing complex; or
  - (iv) a youth program center;
- (P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

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- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5;

(R) an offense under IC 9-30-5-5 (operating a vehicle while intoxicated causing death) if the person had:

- (i) at least fifteen-hundredths (0.15) gram of alcohol per one hundred (100) milliliters of the person's blood, or at least fifteen-hundredths (0.15) gram of alcohol per two hundred ten (210) liters of the person's breath; or

- (ii) a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; ~~or~~

(S) aggravated battery (IC 35-42-2-1.5); **or**

**(T) involuntary manslaughter by a child care provider (IC 35-42-1-4(e)).**

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

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